

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

IN RE: T-MOBILE CUSTOMER DATA : **MDL No. 3019**
SECURITY BREACH LITIGATION :
 : **Master Case No. 4:21-MD-03019-BCW**
THIS DOCUMENT RELATES TO: :
ALL ACTIONS :

**CHARLES E. SCHAFFER AND LEVIN SEDRAN & BERMAN LLP'S
APPLICATION FOR APPOINTMENT TO PLAINTIFFS' EXECUTIVE COMMITTEE**

I. INTRODUCTION

Pursuant the Order setting the Initial Pretrial Conference (ECF Doc. No. 4), and Fed. R. Civ. P. 23(g), Levin Sedran & Berman (“Levin Sedran”) and its lead attorney Charles E. Schaffer respectfully submit this application to be appointed as a member of the Plaintiffs’ Executive Committee for the proposed classes of plaintiffs in this litigation.¹

II. LEVIN SEDRAN & BERMAN AND CHARLES E. SCHAFFER MEET OR EXCEED EACH OF THE FOUR CRITERIA SPECIFIED IN THE COURT’S ORDER AND THE REQUIREMENTS OF RULE 23(g)(1)(A).

A. Levin Sedran and Charles E. Schaffer Have Extensive Experience in This Type of Litigation and Meet or Exceed the Requirements of Rule 23(g)(1)(A)(ii) and (iii).

Leading the Levin Sedran team is firm partner Charles E. Schaffer who is a nationally recognized leader in complex and class action litigation. He has been appointed to leadership positions by federal courts across the country including in consumer class actions involving

¹ The Court specifically stated that it “....will consider the following factors in appointing lead or leadership counsel: counsel’s willingness and ability to commit to a time-consuming process, counsel’s ability to work cooperatively, any professional experience in litigation of this type, existing access to resources to advance the litigation in a timely manner, and contribution to a leadership team that adequately reflects the diversity of legal talent available and the requirements of the case and achieves diversity pertaining to gender, national origin, geography, years of practice, age, and other factors.” *See* ECF Doc 4 n. 2.

defective products, environmental contamination, data breaches and unfair and deceptive practices.² He has also been instrumental to successful settlements of these types of cases.³

Through 35 years of serving its clients, Levin Sedran's attorneys have gained national recognition for their experience and skill and are frequently called upon to lead some of the largest class actions and mass torts in the country.⁴

2 Mr. Schaffer's appointments in MDL litigation include, *inter alia*, *In re Apple Inc. Device Performance Litig.*, MDL No. 2827 (N.D. Cal.) (Plaintiffs' Executive Committee); *In re Intel Corp. CPU Mktg., Sales Practices & Prods. Liab. Litig.*, MDL No. 2838 (D. Or.) (Plaintiffs' Executive Committee); *In Re Aqueous Film-Foaming Foams (AFFF) Prods. Liab. Litig.*, MDL No. 2873 (D.S.C.) (Plaintiff's Steering Committee); *In re Wells Fargo Insurance Mktg. Sales Practices Litig.*, MDL No. 2797 (C.D. Cal.) (Plaintiffs' Executive Committee); *In Re: Hill's Pet Nutrition, Inc., Dog Food Products Liability, Litig.*, 2:19-md-02887- JAR-TJJ (D. Kan.) (Plaintiffs' Executive Committee); *In re: JP Morgan Modification Litig.*, MDL No. 2290 (D. Mass.) (Plaintiffs' Co-lead Counsel); *In re: IKO Roofing Prods. Liab. Litig.*, MDL No. 2104 (C.D. Ill.) (Plaintiffs' Co-lead Counsel); *In re: HardiePlank Fiber Cement Siding Litig.*, MDL No. 2359 (D. Minn.) (Plaintiffs' Executive Committee); *In re Navistar Diesel Engine Prods. Liab. Litig.*, MDL No. 2223 (N.D. Ill.) (Plaintiffs' Executive Committee); *In re: Azek Decking Sales Practice Litig.*, No. 12-6627 (D.N.J.) (Plaintiffs' Executive Committee); *In re: Pella Corporation Architect & Designer Series Windows Mktg. Sales Practices & Prod. Liab. Litig.*, MDL No. 2514 (D.S.C.) (Plaintiffs' Executive Committee); *In re: Navistar Diesel Engine Prods. Liab. Litig.*, MDL No. 2223 (N.D. Ill.) (Plaintiffs' Steering Committee); *In re: CitiMortgage, Inc. Home Affordable Modification Program ("HAMP")*, MDL No. 2274 (C.D. Cal.) (Plaintiffs' Executive Committee); *In re: Carrier IQ Consumer Privacy Litig.*, MDL No. 2330 (N.D. Cal.) (Plaintiffs' Executive Committee); *In re: Dial Complete Marketing & Sales Practices Litig.*, MDL No. 2263 (D.N.H.) (Plaintiffs' Executive Committee); *In re: Emerson Electric Co. Wet/Dry Vac Mktg. & Sales Litig.*, MDL No. 2382 (E.D. Miss.) (Plaintiffs' Executive Committee); *In re: Colgate-Palmolive Soft Soap Antibacterial Hand Soap Mktg. & Sales Practice Litig.*, No. 12-md-2320 (D.N.H.) (Plaintiffs' Executive Committee); and *Gold v. Lumber Liquidators, Inc.*, No. 3:14-cv-05373-TEH (N.D. Cal.) (Plaintiffs' Executive Committee). In addition, I have served as member of litigation teams where Levin Sedran was appointed to leadership positions, in, *inter alia*, *In re Chinese-Manufactured Drywall Product Liability Litigation*, MDL No. 2047 (E.D. La.); *In re Viox Products Liability Litigation*, MDL No. 1657 (E.D. La.); *In re Orthopedic Bone Screw Products Liability Litigation*, MDL No. 1014 (E.D. Pa.); and *In re Diet Drug Litigation*, MDL No. 1203 (E.D. Pa.). Mr. Schaffer has also served in leadership positions in class actions which were not consolidated into an MDL.

3 For example, Mr. Schaffer was instrumental in bringing about nation-wide settlements in, *inter alia*, *In re Wells Fargo Insurance Marketing Sales Practice Litigation*, MDL No. 2797 (\$423,500,000); *In Re CertainTeed Corporation Roofing Shingles Product Liability Litigation*, MDL No.: 1817 (E.D. Pa.) (valued at \$815,000,000), *In re CertainTeed Fiber Cement Siding Litigation*, MDL No: 2270 (E.D. Pa.) (\$103,900,000) and *In re: JP Morgan Modification Litigation*, MDL No. 2290 (D. Mass.) (valued at \$506,000,000).

4 For example, Courts have appointed the firm lead counsel or to other leadership positions in hundreds of other cases, which includes more than forty MDLs. LSB is presently serving or has served in such positions in several of the nation's largest and most technically complex class actions. *See e.g.*, *In re Chinese-Manufactured Drywall Product Liab. Litig.*, MDL No. 2047 (E.D. La.) (Lead Counsel); *In re Nat'l Football League Players' Concussion Injury Litig.*, MDL No. 2323 (E.D. Pa.) (Plaintiffs Steering Committee and Subclass Counsel for Settlement); **Error! Main Document Only.** *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, MDL 2179 (E.D. La.) (**Error! Main Document Only.** Special Counsel to the Plaintiffs' Fee and Cost Committee); *In re Air Cargo Shipping Servs. Antitrust Litig.*, MDL No. 1775 (E.D. N.Y.) (Co-Lead Counsel); *In re Wells Fargo Insurance Marketing Sales Practices Litigation*, MDL No. 2797 (C.D. Ca.) (Plaintiffs' Executive Committee); *In re Apple Inc. Device Performance Litigation*, MDL 2827 (N.D. Ca.) (Plaintiffs' Executive Committee); and *In re: Intel Corp. CPU Marketing Sales Practices and Products Liability Litigation*, MDL 2828 (C.D. Or.) (Plaintiffs' Executive Committee to represent the interests of governmental entities). *See also* Levin Sedran's firm resume attached as Exhibit "A".

Of particular relevance to this litigation, Mr. Schaffer and LSB have extensive experience in data breach and privacy cases, including serving as a member of leadership in *In re Target Corporation Customer Data Security Breach Litigation*, MDL 2522 (D. Minn.) (settlement value \$39 million settlement for plaintiff financial institutions), *Green v. Accolade, Inc.*, 2:18-cv-00274 (E.D. Pa.) (where an employer data breach resulted in compromised employee PII) ; *Kuss v. American Home Patient, Inc. et. al.*, 8:18 -cv-0248 (M.D. Fla.) (where laptops were stolen and patient's medical information was compromised); *Abdelmessih v. Five Below, Inc.*, 2:19-cv-01487 (E.D. Pa.) (where retailer compromised customers' PII), *In re Hudson's Bay Company Data Security Incident Consumer Litigation*, Civil Action No. 18-cv-8472 (S.D.N.Y.) (where retailer compromised customers' electronically-stored PII), *Culberston v. Deloitte Consulting LLP*, 1:20-cv-3962 (S.D.N.Y.) (where electronically-stored PII of pandemic assistance applicants compromised), *In re Rutters Inc. Data Security Breach Litigation*, 1:20-cv-00382 W.D. Pa.) (retailer compromised customers' PII), *Haseme et. al., v Bosley , Inc.*, No.: 2:21-cv-00946 (W.D.Pa.) (hair transplant company compromised customers' PII), and *In Re Wawa, Inc. Data Security Litigation*, No. 2:19-cv-06019 (E.D. Pa.) (Representing financial institutions in relation to compromise of retail customers' PII) In addition, in *In re Marriot International Customer Data Security Breach Litigation*, MDL No. 2879 (D. Mass.), Mr. Schaffer served as member of plaintiffs' vetting committee and assisted leadership in selecting plaintiffs for inclusion in the consolidated amended complaint.

Mr. Schaffer and Levin Sedran also have extensive experience in privacy cases, including serving as Co-lead counsel in *Bryd v. Aaron's Inc.*, No. 11-101 (W.D. Pa.), *Peterson v. Aaron's Inc.*, No. 1-14-cv-1919 (N.D. Ga.)(where defendant placed spyware on rental computers)⁵ and on

⁵ The *Aaron's* litigation involves spyware surreptitiously placed on rental computers by the rental company resulting in an invasion of the consumer's privacy.

the Executive Committee in *In re Carrier IQ, Inc., Consumer Privacy Litigation*, No. 12-md-1330 (N.D. Cal.) (where defendant placed software on mobile devices).⁶

As demonstrated above, Mr. Schaffer is well-versed in complex litigation including the factual and legal nuances of data breach cases and has been involved in all phases of data breach litigation, from the initial investigation through obtaining relief for the class through a nationwide settlement. Based on his complex litigation experience, Mr. Schaffer and his firm are well-qualified to serve as a member of the PSC in this action. Along with his class action and mass tort experience, Mr. Schaffer has an LLM in Trial Advocacy and has extensive experience prosecuting complex individual actions on behalf of injured individuals in products liability, medical negligence and drug and medical device actions. He has served as Lead Counsel in these matters and successfully tried cases to jury verdicts. Undoubtedly, Lead Counsel and fellow members of the Executive Committee will benefit from his insight and experience in prosecuting and trying those actions to jury verdicts.

B. Levin Sedran and Charles E. Schaffer are Willing and Able to Commit to a Time-Consuming Project and Meet or Exceed the Requirements of Rule 23(g)(1)(iv).

As illustrated by its track record, Levin Sedran has repeatedly demonstrated its ability to commit to prosecuting cases through trial, and even post-trial appeals when necessary.⁷ Levin Sedran has committed a partner, Charles E. Schaffer and other members of the firm plus a

⁶ The *Carrier IQ* litigation involved Carrier IQ software placed on mobile devices that surreptitiously captured private information, including URIs, search terms, usernames, passwords and geo-locations resulting in an invasion of privacy. During the litigation, Mr. Schaffer worked as part of the discovery and expert committees. After securing through discovery motions practice computerized records referred to by counsel for Google Inc. as “radioactive,” Mr. Schaffer was instrumental in demonstrating that the software at issue was intercepting consumers’ private SMS text messages. This led to a national class action settlement which provided monetary benefits to the class as well as changes to the way that the software is coded.

⁷ See, e.g., *Exxon Valdez Oil Spill Litig.*, No.: 889 0095 (D. Alaska); *Helman, et al. v. The Goodyear Tire and Rubber Co. (“Entran III”)*, No. 12-00685 (D. Colo.), *Chinese-Manufactured Drywall Product Liability Litig.*, MDL No.: 2047 (E.D. La.); *Diet Drug Product Liability Litig.*, MDL No.: 1203 (E.D. Pa.); *Vioxx Product Liability Litig.*, MDL No.: 1657 (E.D. La.); and *Asbestos School Litig.*, No.: 83-0268 (E.D. Pa.). See also Levin Sedran’s firm resume attached as Exhibit “A”.

dedicated team of associates and staff, to assure that Plaintiffs efficiently prosecute this litigation to a successful conclusion. If additional resources are necessary, Levin Sedran will supply them.

C. Levin Sedran and Charles E. Schaffer Work Cooperatively with Others.

Levin Sedran and Charles E. Schaffer have forged excellent working relationships with the other firms nominated here for Lead Counsel and Executive Committee positions (as well as many of the firms that have submitted applications for leadership). Levin Sedran attorneys pride themselves on forming productive and collegial relationships with their co-counsel and believe that such cooperative working relationships are necessary for effective representation.

D. Levin Sedran is Willing to Commit to the Necessary Resources to this Matter and Meets or Exceeds the Requirements of Rule 23(g)(1)(iv).

Levin Sedran possesses both the financial and human resources necessary to successfully prosecute large-complex cases to trial. The firm is comprised of attorneys who are well versed in all stages of litigation against large, heavily funded defense firms. Having practiced exclusively in complex and class-action litigation since its inception over three decades ago, Levin Sedran recognizes the commitment of financial resources this litigation will entail. We do not use third-party financing and routinely advance substantial sums on behalf of our clients in complex cases, recovery of which is contingent upon the successful prosecution of the case and are prepared to do so here. Charles Schaffer who will be leading the Levin Sedran team also recognizes the time commitment necessary from him to serve as a member of the PSC. As stated *supra*, he is serving in leadership positions in only two active MDLs and is prepared to make the necessary commitment of his time and energy as an Executive Committee member.

E. The Rule 23(g)(1)(B) Discretionary Factors Also Favor the Appointment of Charles Schaffer of Levin Sedran.

Relevant considerations include a strong commitment to diversity, inclusion, and opportunity. In reviewing leadership applications in complex class action litigation, courts

increasingly consider whether a proposed leadership team demonstrates a commitment to diversity and the potential to provide substantive work for junior attorneys.⁸ Levin Sedran is committed to promoting diversity and inclusion and values the contributions brought to the firm by a team diverse in background, life experience, and cultural perspective. For example, under the supervision of Mr. Schaffer, LSB's associates, David C. Magagna, Jr. and Marissa Pembroke, will be committed to the case and will gain invaluable experience. Sandra Dugan who is bilingual and a bicultural Mexican American is in a unique position to advocate for Spanish-speaking as well as English-speaking claimants. Her heritage also gives her a wide perspective that leads to creative solutions. Levin Sedran's commitment to diversity does not end with the identity of those attorneys set to staff this action or with simply "look[ing] good on paper."⁹ Far from merely promoting diversity quotas, Levin Sedran fosters diversity, inclusion and acceptance which is demonstrated through its members leadership roles in cases, legal organizations,¹⁰ and community associations.¹¹ Moreover, Levin Sedran is a workplace that wholly supports and fosters those in the LGBTQIA community, with some community members in its partnership ranks.

⁸ See, e.g., Order re Consolidation and Interim Class Counsel, *In re Robinhood Outage Litig.*, No. 20 Civ. 01626 (N.D. Cal. July 14, 2020) (denying leadership application where "all four of the proposed lead counsel [were] men" and "leadership roles [were not] made available to newer and less experienced lawyers"); Tr. of Proceedings at 13-15, *In re Chi. Board Options Exch. Volatility Index Manipulation Antitrust Litig.*, No. 18 Civ. 4171 (N.D. Ill. July 11, 2018), ECF No. 48 (setting forth criteria for interim leadership applications).

⁹ See Bolch Judicial Institute, *Duke Law Guidelines and Best Practices Addressing Chronic Failure to Diversify Leadership Positions in The Practice of Law* (Part 1) (May 10, 2018).

¹⁰ Frederick Longer is a board member of Public Justice and Daniel Levin is the President of Philadelphia Trial Lawyers. Messrs. Longer and Levin in their leadership positions promote diversity and equality in the legal profession.

¹¹ Charles Schaffer is a member of Compass at Ancillae Assumpta Academy whose purpose is to encourage broader awareness and education for our school and for our children about family types, cultures, ethnicities, races, national origins, religious experiences and abilities that are different than our own.

III. CONCLUSION

Levin Sedran's and Mr. Schaffer's record of successfully prosecuting consumer class actions, coupled with their proven ability to work as part of an MDL leadership team, makes Mr. Schaffer and the firm well suited to serve the Plaintiffs in this litigation as a member of the PSC. Based on the foregoing, Charles E. Schaffer of Levin Sedran respectfully requests appointment to the Plaintiffs' Executive Committee.

Dated: February 1, 2022

By: /s/Charles E. Schaffer
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